

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**CHEMICAL WASTE MANAGEMENT, INC.
EMELLE, SUMTER COUNTY, ALABAMA
USEPA ID NUMBER ALD000622464**

ORDER NO. 10-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Chemical Waste Management, Inc. pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Chemical Waste Management, Inc. (hereinafter "CWM" or "the Permittee") operates a commercial hazardous waste disposal facility in Emelle, Sumter County, Alabama under AHWMMA hazardous waste facility permit (hereinafter "the Permit") number ALD000622464.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. From November 16, 2009 through November 19, 2009, representatives of the Department conducted an on-site compliance evaluation inspection (hereinafter "CEI") of CWM. The CEI and subsequent review of CWM's compliance showed the following Department contentions:

- (a) Pursuant to Permit Condition II.G.2.b. and ADEM Admin. Code r. 335-14-5-.05(3)(c), if the discrepancy (on a manifest) is not resolved within 15 calendar days after receiving the waste, the Permittee must immediately submit to the Department a letter describing the discrepancy and attempts to reconcile it, a copy of the manifest or shipping paper at issue, and a description of what resolution(s) occurred. If a discrepancy is not resolved within 15 calendar days, the waste must be rejected back to the generator within 10 calendar days.

CMW did not reject a discrepant shipment of hazardous waste back to the generator within the prescribed time period. On April 1, 2009, CWM received a shipment of hazardous waste on Manifest No. 000085613VES. The manifest had discrepancies which were not resolved by April 16, 2009 (15th day); the shipment was not rejected back to the generator as required by the permit.

- (b) Pursuant to Permit Condition III.C.3., the sampling and staging of drums shall not exceed 72 hours.

On March 9, 2009, CWM received a shipment of hazardous waste on Manifest #000884945GBF. CMW did not sample two containers of hazardous waste listed on this manifest until April 13, 2009 (thirty-five days after the receipt of the waste).

- (c) Pursuant to Permit Condition III.E.2, the Permittee shall maintain an impervious coating which is free of cracks, gaps, or other deterioration on all containment system surfaces which may be exposed to hazardous wastes or hazardous constituents (or releases of hazardous wastes or hazardous constituents).

CWM did not maintain an impervious coating on the containment system in Building 702.

The coating was chipped or worn in several places, and the concrete expansion joint sealant was degraded in three areas. These noncompliant items were corrected by CWM on November 18, 2009.

- (d) Pursuant to Permit Condition IV.G., the Permittee shall maintain the secondary containment systems for all storage and/or treatment tanks and for all ancillary equipment as specified in Section D-2-2d of the permit application and in

accordance with the requirements of ADEM Admin. Code r. 335-14-5-.10(4)(e)1., which requires, in part, that external liner systems be free of cracks and gaps and provide an impermeable interior coating or lining if a concrete liner is used.

CWM did not maintain the secondary containment system for Tank Farm 4 in accordance with this permit requirement. The concrete liner system's impermeable coating and three expansion joints had deteriorated in several areas; the paint was worn away in several places and in three areas the expansion joints were cracked or had gaps. These noncompliant items were corrected by CWM on November 18, 2009.

- (e) Pursuant to ADEM Admin. Code r. 335-14-5-.09(3), the owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

CMW did not store spent jet fuel filters in suitable containers. In Bay 3- Slot A of Building 603A, the bottoms of two corrugated cardboard boxes of jet fuel filters were saturated with liquids; however, liquids were not observed on the floor surrounding the boxes. This noncompliant item was corrected by CWM on November 18, 2009.

5. As a result of the CEI, the Department issued a Notice of Violation (NOV), dated January 19, 2010, to CWM for violations of hazardous waste regulations that were discovered during the CEI.

6. On February 20, 2010, the Department received CWM's response to the aforementioned NOV.

7. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil

penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

8. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATION:** CWM failed to comply with container management standards and the standards and conditions detailed in its Permit. The Department is not aware of any harm to the environment resulting from the alleged violations.

(b) **THE STANDARD OF CARE:** CWM did not exhibit a standard of care commensurate with applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Based on the information available to the Department, it appears that no economic benefit was conferred upon CWM.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** CWM responded promptly to correct the violations noted in the Department's January 19, 2010 NOV.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** CWM has a history of certain violations of a similar nature and extent of its Permit and ADEM Admin. Code div. 335-14.

(f) **THE ABILITY TO PAY:** CWM has not alleged an inability to pay the civil penalty.

9. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

10. The Department neither admits nor denies CWM's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the

alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CWM'S CONTENTIONS

11. CWM immediately responded to any concerns raised by the Department, and CWM has continued to explore with the Department options to more clearly define compliance standards, including arising out of the referenced CEI. In particular, CWM has requested the Department's assistance in further review and guidance regarding surficial cracks in containment coatings that inevitably result from operations at CWM, and in the regulated community in general, without any threat to human health or the environment.

12. CWM neither admits nor denies the Department's contentions. CWM consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative or other proceeding) as an admission by CWM of liability.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations or its permit, CWM, along with the Department, desires to resolve and settle the alleged violations cited above.

The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and CWM agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), CWM agrees to pay to the Department a civil penalty in the amount of \$19,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order.

Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. CWM agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference CWM's name and address and the ADEM Administrative Order Number of this action.

C. The parties agree that, alternatively, CWM may elect to perform a Supplemental Environmental Project (hereinafter "SEP") which has been approved by the Department to offset a portion of the civil penalty referenced in Paragraph A above. This SEP may, at the sole discretion of the Department, offset a portion of the civil penalty at a ratio to be established by the Department based on the relative benefits afforded by a particular SEP proposal.

The offset ratio shall be \$1 for every \$3 spent on the SEP or other lower ratio approved by the Department, but in no event shall the civil penalty be offset below \$10,000.00. Should CWM elect to perform the SEP, CWM shall submit, within thirty days of the effective date of this Consent Order, a notification that it has elected to perform the SEP alternative and a written report describing the SEP project, including the SEP implementation schedule. The SEP project and implementation schedule may be implemented only if approved by the Department. Should CWM elect to perform the SEP project and it is approved by the Department, then within forty-five days of the effective date of this Consent Order, CWM shall pay to the Department a civil penalty of \$10,000.00. Adequate documentation of all expenses related to the SEP shall be submitted to the Department for review and concurrence in determining the amount of the civil penalty to be offset no later than thirty days after the approved completion date of the SEP or the completion of the SEP, whichever is earlier. Routine operating costs (i.e., those costs which would normally be incurred by CWM absent the requirements of the SEP) and costs related to routine compliance requirements, including the costs of complying with the requirements of this Consent Order, shall

not be considered for offset of the civil penalty. Should CWM not offset the total amount of the civil penalty allowed, the remaining amount of the civil penalty which is not offset shall be due and payable within thirty days of the Department's notifying CWM of the remaining amount of the civil penalty due to be paid. If the SEP is implemented, CWM shall submit monthly status reports to the Department documenting actual accomplishments and implementation costs.

D. CWM agrees that, independent of this Consent Order, CWM shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), the regulations promulgated pursuant thereto, and CWM's Hazardous Waste Facility Operating Permit.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations alleged in this Consent Order.

G. CWM agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, CWM agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. CWM also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, CWM agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of CWM, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of CWM)

and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of CWM, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein.

Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; CWM agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

J. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and CWM does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Consent Order shall not affect CWM's obligation to comply with any Federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

M. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

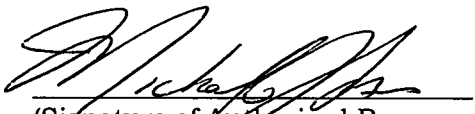
N. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve CWM of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CHEMICAL WASTE MANAGEMENT, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT



(Signature of Authorized Representative)

Michael J. Davis
(Printed Name)

CWM Senior District Manager
(Printed Title)

8-12-10
(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

Penalty Calculation Worksheet

Chemical Waste Management, Inc.
ALD000622464
Emelle, Sumter County, Alabama

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failure to comply with permit requirements regarding discrepant shipments.	1	\$1,000	\$0	\$1,000
Failure to sample waste within 72 hours of receipt	2	\$5,000	\$0	\$0
Failure to maintain an impervious secondary containment coating in a tank or container storage area.	2	\$2,000	\$0	\$2,000
Failure to place hazardous wastes in containers that are compatible with the waste being stored.	2	\$8,000	\$0	\$0
Totals:	7	\$16,000.00	\$0	\$3,000.00

Economic Benefit: \$0
Mitigating Factors: \$0
Ability to Pay: \$0
Other Factors: \$0

Civil Penalty: \$19,000

Footnotes

* See the "Department's Contentions" of the Order for a detailed description of each contended violation and the penalty factors